



THE COMMONWEALTH OF MASSACHUSETTS LABOR RELATIONS COMMISSION GUIDELINES FOR SUBMITTING WRITTEN EVIDENCE

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The written investigation procedure depends exclusively on the written factual information and legal theories the parties submit in writing. To assist the parties to present their positions effectively, the Commission has prepared these Guidelines.

SPECIFICITY IMPORTANT

Initially, charging parties must identify clearly and specifically the particular section of Chapter 150E allegedly violated and the particular legal theory on which their charge is based. For example, if the charging party is alleging a refusal to bargain in violation of Section 10 (a)(5) or 10 (b)(3) of Chapter 150E, it is necessary to specify the manner in which the respondent refused to bargain, like "failing to meet" or "unilaterally changing a condition of employment." Similarly, respondents must identify specifically the particular legal theories or defenses on which they rely.

AFFIDAVITS AND DOCUMENTS

To enable the Commission to make a probable cause determination based on the parties' written submissions, parties are encouraged to submit sworn affidavits from individuals with personal knowledge of the particular facts being relied upon and relevant documentary evidence that will support the claims and defenses of the parties. In the usual prohibited practice investigation there often is a dispute about the facts. In such cases, the Commission will consider only evidence that reflects direct personal knowledge of the facts relating to each element of the claims and defenses being alleged.

ORGANIZATION AND INDEXING

Because many charges will involve complex facts or extensive documentary submissions, the parties should organize the evidence in a manner that will enable the Commission to determine quickly what evidence relates to each element of a particular claim or defense. For example, the parties could prepare a narrative of their legal claim or defense including references to appropriate paragraphs of attached affidavits or documents. Similarly, if a party submits a lengthy document, like a collective bargaining agreement, the specific portion of the document to which the party refers should be identified and an explanation of how that portion of the document relates to the charge should be provided. An index listing all affidavits and documents would further facilitate consideration.

GETTING FURTHER HELP

Between 1:00 - 5:00 p.m. Monday, Wednesday and Friday a Commission Information Officer is on duty to answer questions concerning G.L. c.150E and c.150A and the Commission's procedures. The Information Officer can be contacted either by visiting the Commission's office at 399 Washington Street, Boston, MA or by calling: 617-727-3505.

A Guide to the Massachusetts Public Employee Collective Bargaining Law contains a brief summary of G.L. c.150E, the Commission's Regulations and a brief summary of Commission procedure and case decisions. The *Guide* may be purchased from the Institute For Governmental Services, 221 Middlesex House, University of Massachusetts, Amherst, MA 01003.

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EVIDENCE OUTLINE

This evidence outline is designed to assist parties to prepare submissions in cases pending at the Labor Relations Commission. It identifies some of the key elements of common charge allegations and defenses.¹ Please ensure that your submission includes the evidence described below for each allegation made. If an allegation is not listed and you need assistance you may contact the Commission's Information Officer between 1 p.m. - 5 p.m. Monday through Friday.

DISCRIMINATION AGAINST AN EMPLOYEE FOR ENGAGING IN PROTECTED ACTIVITY **Section 10(a)(3) or (4)**

- i. Describe the alleged protected activity (for example, union organizing, union steward activities, filing a grievance, filing a charge at the Commission). Describe with specificity dates, times, places, persons involved.
- ii. Provide evidence that the employer knew of the protected activity: who saw what, where and when; how does the witness know the facts to which he or she swears?
Employers should offer evidence demonstrating lack of knowledge, if available.
- iii. Charging Party should describe the discriminatory action the employer took against the employee: who took the action? when? provide documentation or sworn statements by witnesses; what does or does not make the action discriminatory?
The employer should supply evidence rebutting these allegations (i.e. evidence that no discriminatory conduct occurred).
- iv. Provide evidence to prove the employer's motive for taking the action: e.g. provide sworn statements from witnesses who heard employer agents express hostility or lack thereof toward the employee's protected activity; or show that the timing of the activity indicates its illegality or legality; give proof of "shifting" reasons for the action, or of a departure from established procedures for disciplinary action, including any reliance on state charges.
The employer should provide proof of the legitimacy of its reasons for taking the action.

COMMON REFUSAL TO BARGAIN ALLEGATIONS

Sections 10 (a)(5) and 10 (b)(2)

Note: Only unions and employers may file refusal to bargain charges

i. REFUSAL TO MEET ALLEGATIONS

Supply dates of requests for meetings

Supply text of each party's communications concerning scheduling
Explain the basis for believing that respondent's conduct does or does not violate the law

ii. SURFACE BARGAINING ALLEGATIONS

Supply detailed chronology of all meetings, and identify each side's movement (or lack thereof) on all **proposals** and counterproposals at **each meeting**

Explain the basis for believing that respondent's conduct does or does not violate the law.

iii. REFUSAL TO FURNISH INFORMATION ALLEGATIONS

Supply proof of all requests for information

Supply proof of all communications concerning the requested information (including responses to requests)

Explain the basis for believing that charging party is or is not entitled to the requested information in the form requested

iv. UNILATERAL CHANGE ALLEGATIONS

Describe the past practice, include: date when practice started, detailed description of the practice and identify the mandatory subject(s) affected. Include evidence that respondent knew of the past practice.

Identify the date when the practice was changed, the date and manner by which the charging party learned of the change, describe how the change affects a mandatory subject of bargaining, and explain what, if anything, the charging party did to protest the change.

Identify any contract provisions that relate to the change, state whether a grievance has been filed about the change, and explain the status of the grievance. Tell the Commission why it should or should not require the parties to arbitrate the grievance.

Explain why the change does or does not violate the law.

v. CONTRACT REPUDIATION ALLEGATIONS

Identify the contract provisions that respondent has repudiated, supply proof of the date when respondent repudiated the provisions and describe how the respondent repudiated the contract provisions.

Identify the date when, and describe the manner by which, the charging party learned of the alleged repudiation.

Explain why respondent's conduct does or does not constitute a repudiation of the contract.

Supply a copy of any grievance filed concerning the repudiation. Tell the Commission why it should or should not require the parties to arbitrate the grievance.

vi. ARBITRATION OR MEDIATION PROCEDURES

If the subject of the refusal to bargain charge is appropriate either for grievance arbitration or mediation by the Board of Conciliation (BCA) or the Joint Labor Management Committee (JLMC) please explain why the Commission should not defer to the grievance arbitration process or refer the case to either the BCA or the JLMC. Note: the Commission's deferral to arbitration policy permits the Commission to decide to defer to arbitration only when the respondent agrees to waive timeliness defenses to arbitration in order to ensure that the merits of the grievance can be resolved by the arbitrator. No grievance need currently be pending as long as the respondent to the grievance agrees to waive such timeliness defenses.

BREACH OF DUTY OF FAIR REPRESENTATION **Section 10 (b)(1)**

- i. Identify what the union failed to do for the charging party, e.g., process a grievance, take a grievance to arbitration on behalf of an employee, etc.
- ii. Describe with specificity what the charging party asked the union to do, when and to whom the request was communicated (supply copies of any correspondence).
- iii. Describe what the union did or failed to do, including what was said, by whom, and when.
- iv. Describe with specificity what harm the charging party has suffered as a result of the union's action or inaction. Provide dates and copies of any available documentation.
- v. Present evidence to prove whether the grievance is "clearly frivolous."
- vi. Provide evidence that will show that the union's action or failure to act either was or was not arbitrary, perfunctory, inexcusably negligent or unlawfully motivated. Explain the basis for the belief that the union's conduct was "arbitrary" (i.e., the union had no rational basis for its action), "perfunctory" (i.e., the union was merely going through the motions), "inexcusably negligent" (i.e., the union blatantly neglected its duty), or unlawfully motivated (see the discussion about 10(a)(3) charges, above, for evidentiary requirements to prove motive).

¹ The Outline has been written to reference allegations of G.L. c.150E but is also applicable to common sections of c.150A. For example the outline of c.150E Section 10 (a)(3) or (4) evidence is equally applicable to c.150A Section 4(3) or (4); c.150E Sections 10 (a)(5) or 10(b)(2) is similar to c.150A Section 4(5) or 4B.

150E SAMPLE REMEDIES¹ IN PROHIBITED PRACTICE CASES

150E EMPLOYER Prohibited Practices

10(a)(1) statements:

threats, questions, intimidating statements, etc.

10(a)(1) conduct:

including dismissal, lay-off, demotion, denial of promotion, etc., because of protected, concerted activity

10(a)(2) conduct:

unlawful domination or interference with administration of a union

10(a)(3) discriminatory conduct:

including adverse evaluation, dismissal, lay-off, demotion, denial of a promotion, etc. because of union or other protected activity

10(a)(4) discriminatory conduct:

including adverse evaluation, dismissal, lay-off, demotion, denial of promotion, etc. because of participation in Commission proceedings

10(a)(5) conduct:

refusal/failure to bargain in good faith prior to changing or instituting new conditions of employment

repudiation of contract terms or refusal to participate in contractual grievance process

refusal to meet; refusal to sign negotiated agreement

failure or refusal to submit or support funding request for contract

10(a)(6) conduct:

refusal to mediate, etc. in good faith

Remedy

Post notice of employee rights with commitment not to violate rights by prohibited conduct.

Restore employee(s) to pre-discrimination status including job, backpay (if any was lost) with interest, seniority, etc.

Cease and desist from unlawfully supporting union; union can be disestablished

Restore employee(s) to pre-discrimination status including job, backpay (if any was lost) with interest, seniority, etc.

Restore employee(s) to pre-discrimination status including job, backpay (if any was lost) with interest, seniority, etc.

Bargain upon request and restore conditions of employment to pre-change status, make employees "whole" for any resulting losses

Comply with contract terms, including making employees "whole," or participate in grievance process

Offer to meet at reasonable times; sign negotiated contract

Submit appropriation request to legislative body; and/or support the request before body

Participate in mediation, etc. as directed by either Board of Conciliation and Arbitration or Joint Labor Management Committee

150E UNION Prohibited Practices

10(b)(1) statements:

threats, questions, intimidating statements, etc.

10(b)(1) conduct:

failure/refusal to investigate or process a grievance that is not clearly frivolous

attempt to cause employer to take adverse action against an employee because of the employee's participation in conduct protected by c.150E

unlawful demand for an Agency Service Fee (including unlawful ratification, inadequate notice of rights, inadequate financial information, etc.)(a "validity charge")

demand for an Agency Service Fee that exceeds amount allowed by law (an "amount charge")

10(b)(2) conduct:

refusal to meet and bargain in good faith

insistence to impasse upon bargaining about non-mandatory subject

refusal to sign negotiated agreement

refusal to participate in contractual grievance process

10(b)(3) conduct:

refusal to mediate, etc. in good faith

Remedy

Post notice of employee rights with commitment not to violate rights by prohibited conduct

Ask employer to agree to process grievance up to and including arbitration; if grievance cannot be processed make employee whole for any economic loss

Cease and desist from unlawful request to employer and make employee whole for any economic loss

Rescind demand

Accept fee that includes only lawful amount due to union

Offer to meet at reasonable times and bargain upon request

Cease insisting upon bargaining about non-mandatory subject; withdraw unlawful demands (e.g., parity clause)

Sign negotiated contract

Participate in grievance process, including make grievant whole for losses resulting from refusal to participate

Participate in mediation, etc. as directed by either Board of Conciliation and Arbitration or Joint Labor Management Committee

¹ The Commission has authority to order other appropriate remedies at the request of the parties.

² Violators will be ordered to post Notices in all cases to inform employees of rights guaranteed by G.L. c.150E.

COMMONWEALTH OF MASSACHUSETTS BEFORE THE LABOR RELATIONS COMMISSION

In the Matter of
CITY OF BEACON

and

BEACON EMPLOYEES ASSOCIATION

Case No. MUP-111

Date: Jan. 20, 1991

CHARGING PARTY'S SUMMARY OF CHARGE

The Beacon Employees Association (Association), filed a charge with the Labor Relations Commission (Commission) on January 1, 1991, alleging that the City of Beacon (Respondent) had engaged in prohibited practice within the meaning of Sections 10(a)(1), (2), (3), (4), (5) and (6) of Massachusetts General Laws, Chapter 150E (Law).

Pursuant to Section 11 of the Law and Section 15.04 of the Commission's Rules, the Charging Party submits this statement of the factual allegations of its charge. References are to affidavits submitted to the Commission by the Charging Party with this summary.

1. The Respondent is a public employer within the meaning of Section 1 of the Law.
2. The Association is an employee organization within the meaning of Section 1 of the Law.
3. The Association is the exclusive collective bargaining representative for all full-time and regular part-time non-managerial and non-confidential employees employed by the Respondent as certified on July 1, 1985 by the Commission in case no. MCR-10.
4. Kim Manager (Manager) is the Town Manager of the Respondent and is an agent of the Respondent.
5. Terry President (President) is the President of the Association referred to in paragraph 2, above, and is a member of the bargaining unit referred to in paragraph 3, above.

COUNT I - Section 10(a)(1) Violation

6. On or about September 3, 1990, Manager told several members of the bargaining unit referred to in paragraph 3, above, that the President was a "loafing, dues-stealing union fraud," and the employees would be better off with their own organization rather than an organization riddled with "outsiders." [See affidavit of President, paragraph 2.]
7. By the conduct alleged in paragraph 6, the Respondent has interfered with, restrained and coerced employees in the exercise of rights guaranteed by the Law in violation of Section 10(a)(1) of the Law.

COUNT II - Section 10(a)(2) Violation

8. Les Employee (Employee) and Sandy Worker (Worker) are public employees and members of the bargaining unit referred to in paragraph 3, above.
9. On October 3, 1990, the United Workers Association (UWA) filed a representation petition with the Commission that was docketed and assigned Case No. MCR-111.
10. The petition referred to in paragraph 9, above, seeks to sever certain employees from the bargaining unit referred to in paragraph 3, above, and to create a separate bargaining unit of employees who are employed by the Respondent in its public service division.
11. Employee and Worker were active in the formation of the UWA and in the filing of the representation petition referred to in paragraphs 9 and 10, above. [See affidavit of employee K.P. Duty, paragraph 3.]
12. On or about November 3, 1990, Employee, Worker and President attended and testified at a hearing at the offices of the Commission on the representation petition referred to in paragraphs 9 and 10, above. [See affidavit of President, paragraph 4.]

13. On or about November 4, 1990, the Respondent denied President's request for paid leave to represent the Association at the Commission's proceedings referenced in paragraph 12, above. No reason was given for this denial.
14. On or about November 4, 1990, the Respondent granted both Employee and Worker paid leave to represent the UWA at the Commission's proceedings referenced in paragraph 12, above. No reasons were communicated to other employees about why Employee and Worker were authorized vacation leave but President was denied the same.
15. By the conduct alleged in paragraphs 13 and 14, above, the Respondent has unlawfully assisted in the formation and existence of a union, or has unlawfully interfered with the administration of the Association in violation of Section 10(a)(2) of the Law.
16. By the conduct alleged in paragraphs 13, 14 and 15, above, the Respondent has derivatively interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under the Law, in violation of Section 10(a)(1) of the Law.

COUNT III - Section 10(a)(3) Violation

17. On or about December 1, 1990, Manager notified President that the hours of those bargaining unit employees who were Association members would be reduced on or about January 1, 1991. [See affidavit of President, paragraph 5.]. The hours of employees who were not Association members were not reduced. [See payroll records and timesheets submitted as an Exhibit.]
18. Joining a union is protected activity within the meaning of Section 2 of the Law.
19. Respondent took the action described in paragraph 17 because bargaining unit members had joined the Association. No other explanation was given for the decision to reduce the hours of Association members.
20. By the conduct described in paragraph 17 for the reason identified in paragraph 19, the Respondent has discriminated against employees because of their union membership in violation of Section 10(a)(3) of the Law.
21. By the conduct described in paragraphs 17 and 20, the Respondent has derivatively interfered with, restrained and coerced employees in violation of Section 10(a)(1) of the Law.

COUNT IV - Section 10(a)(4) Violation

22. By the conduct alleged in paragraph 13, the Respondent has discriminated against an employee because the employee participated in a Commission proceeding, in violation of Section 10(a)(4) of the Law.

COUNT V - Section 10(a)(5) Violation

23. Respondent and the Association are parties to a collective bargaining agreement effective from January 1, 1989 through March 1, 1991, covering the bargaining unit described in paragraph 3, above. [See copy of agreement, submitted as Exhibit 2.]
24. Article 3 of the collective bargaining agreement specifies that Respondent will provide a plan of health insurance including Total Coverage, Inc. health insurance; and further specifies that Respondent will pay 85% of the premium payments on any health insurance offered to employees.
25. On or about November 7, 1990, Respondent cancelled Total Coverage, Inc. health insurance without providing notice to the Association. [See affidavit of President, paragraph 6.]
26. On or about November 8, 1990, Respondent notified the Association that beginning November 10, 1990, the Respondent would pay no more than 75% for any employee health insurance provided. [See affidavit of President, paragraph 6.]
27. On or about November 9, 1990, the Association filed a grievance concerning the Respondent's cancellation of Total Coverage, Inc. health insurance and Respondent's announced intent to reduce insurance premium payments from 85% to 75%. [See affidavit of President, paragraph 7 and copy of grievance, exhibit 3.]
28. Also on or about November 9, 1990, the Association protested the Respondent's actions, described in paragraphs 25 and 26, above, and demanded to bargain with the respondent concerning the Respondent's decision to eliminate Total Coverage, Inc. health insurance and to reduce premium payments. [See affidavit of President, paragraph 8 and copy of protest letter, Exhibit 4.]
29. On or about November 10, 1990, the Respondent told the Association that the Respondent would not process the grievance referred to in paragraph 27, above. [See affidavit of President, paragraph 8.]
30. On or about November 10, 1990, the Respondent reduced its insurance premium contributions from 85% to 75%. [See affidavit of payroll clerk I. Wright Chex, paragraph 4.]
31. Insurance premium payment plans are mandatory subjects of bargaining.

32. By the acts described in paragraphs 25 and 30, above, the Respondent has refused to bargain in good faith in violation of Section 10(a)(5) of the Law by unilaterally changing a term and condition of employment without providing the Association with an adequate opportunity to bargain.
33. By the acts described in paragraphs 25, 26, 29 and 30, above, the Respondent has refused to bargain in good faith in violation of Section 10(a)(5) of the Law by repudiating the terms of an applicable collective bargaining agreement.
34. By the conduct alleged in paragraphs 25, 26, 29, 30, 32, and 33, above, the Respondent has derivatively interfered with, restrained and coerced employees in the exercise of rights guaranteed by the Law in violation of Section 10(a)(1) of the Law.

COUNT VI - Section 10(a)(6) Violation

35. On or about December 29, 1990, the Association filed a petition for mediation with the Massachusetts Board of Conciliation and Arbitration (Board). [See Exhibit 6, petition for mediation.]
36. By letter dated December 30, 1990, the Respondent notified the Association and Board that the Respondent would not participate in mediation by the Board. [See affidavit of President, paragraph 9.]
37. By the act alleged in paragraph 36, above, the Respondent has refused to participate in good faith in mediation procedures specified in the Law in violation of Section 10(a)(6) of the Law.
38. By the conduct alleged in paragraphs 36 and 37, above, the Respondent has derivatively interfered with, restrained and coerced employees in the exercise of rights guaranteed by the Law in violation of Section 10(a)(1) of the Law.

ARGUMENT

The statements of Manager, an agent of the Respondent, that President was a "loafing, dues-stealing union fraud," disparaged President in the eyes of employees and thereby interfered with President's exercise of duties as a union official. In addition, the statement of Manager that employees would be better off with their own organization and the characterization of the union as "outsiders" threatens and intimidates employees from participating in union activity by suggesting that their union cannot represent them effectively.

This theme was repeated when the Respondent approved vacation leave for Employee and Worker to attend the Commission's November 3, 1990 hearing, while denying approval for the same leave to President. That favoritism toward the employees who were trying to organize the UWA violates Section 10(a)(2) of the Law because the employer is providing special benefits to an employee officer of another union. See *Blue Hills Regional Technical School District*, 9 MLC 1271 (1982). In addition, the Association believes that Manager's denial of vacation leave to President to attend the Commission's hearings violates Section 10(a)(4) of the Law, which prohibits retaliation against employees who have participated in Commission proceedings. See *Metropolitan District Commission*, 14 MLC 1001 (1987).

Similarly, when Manager notified President on or about December 1, 1990 that the hours of Association members would be reduced beginning January 1, Respondent took the action against the Association members only because of their union membership. No other reason was given by Manager. To reduce an employee's hours merely because he or she is a member of one union violates Section 10(a)(3) of the Law, which protects employees from discrimination on the basis of their union membership. See *Trustees of Forbes Library v. Labor Relations Commission*, 384 Mass. 559 (1981).

The Respondent's cancellation of Total Coverage, Inc. health insurance was undertaken unilaterally, without notice to the Association. The benefits provided by Total Coverage, Inc. were greater than the benefits now being provided to employees [see insurance benefit description brochures, appended as Exhibits]. Because the benefits are less than previously provided, the Respondent has adversely affected employee health benefits, which are a form of compensation and a mandatory subject of bargaining. *Town of Ludlow*, 17 MLC 1191 (1990). Accordingly, the Respondent has unilaterally changed employee compensation without bargaining with the Association.

ETC.

I swear or affirm that the facts alleged in this submission are true and correct to the best of my knowledge and belief.

s/Charging Party's Representative

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In the Matter of
 CITY OF BEACON

and

BEACON EMPLOYEES ASSOCIATION

Case No. MUP-111

AFFIDAVIT OF TERRY PRESIDENT

1. I am Terry President, employed since 1972 as a full-time employee of the city of Beacon, and President of the Beacon Employees Association (Association) since 1982. The Association has represented all full time and regular part time employees of the City of Beacon excluding confidential and managerial employees, pursuant to a certification issued by the Commission in 1981 in case MCR-10 [which is attached to this affidavit as Exhibit 1.]
2. On or about September 3, 1990, Beacon Town Manager, Kim Manager (Manager) spoke to a group of the members of the Association's bargaining unit at a meeting held in the 2nd floor conference room of City Hall between 2 p.m. and 3:30 p.m. I attended the meeting and took notes [which are attached to this affidavit as Exhibit 2]. As my notes reflect, during the meeting I heard Manager say that I was a "loafing, dues-stealing union fraud." I also heard Manager say words to the effect that employees would be better off with their own organization rather than with an organization riddled with "outsiders." I saw several employees look at me when Manager said this. I did not have the opportunity to respond during the meeting to Manager's statements. Manager's statements made me feel embarrassed and humiliated.
3. Les Employee and Sandy Worker are two of my co-workers employed by the City and both are in the bargaining unit represented by the Association. I have known Employee and Worker since they began working for the City in 1984 and 1989, respectively. Both Employee and Worker work in the Public Service Division of the City. I have seen Employee and Worker distributing cards to other employees to solicit the employees' support for a group known as the United Workers Association (UWA). An example of the card is attached to this affidavit as Exhibit 3.
4. On October 3, 1990 Employee handed me a copy of an MCR Petition that Employee told me had been filed with the Labor Relations Commission. I believe that Petition has been docketed as case no. MCR-111. Employee told me that Employee and Worker were going to "rid" the Public Service Division of the Association and me by creating their own separate bargaining unit and being represented by the UWA.
 On or about November 3, 1990, I attended and testified at a hearing held at the Labor Relations Commission concerning MCR-111. Employee, Worker and Manager also were present at the hearing.
5. On or about November 2, 1990, I submitted a request to Manager to approve my use of vacation time in order to attend the Commission hearing. The City requires employees to receive permission to take vacation leave. I know that Employee and Worker also submitted requests to take vacation leave to attend the Commission hearing because they told me so and I overheard them talking with Manager about this in Manager's office on November 2, 1990 at about 4 p.m.
 On or about November 4, 1990, I received a note from Manager denying me permission to use my vacation time for the Commission hearing. A copy of Manager's note is attached to this affidavit as exhibit 4. As the note reveals, no explanation of Manager's denial was contained in the note; nor did I receive any explanation of Manager's denial of my request.
 On or about November 14, 1990, I was told by City's Payroll Clerk, I. Wright Chex, that Manager had approved vacation leave for Employee and Worker to attend the Commission's hearing. An affidavit confirming this information has been submitted by I. Wright Chex.
 ETC.

I swear or affirm the above statements are true and correct to the best of my knowledge and belief.

Date: _____ s/Terry President

SAMPLE RESPONDENT RESPONSE TO CHARGING PARTY'S WRITTEN SUBMISSION

COMMONWEALTH OF MASSACHUSETTS BEFORE THE LABOR RELATIONS COMMISSION

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In the Matter of
CITY OF BEACON

and

BEACON EMPLOYEES ASSOCIATION

Case No. MUP-111

Date: Feb. 16, 1991

RESPONDENT'S RESPONSE TO CHARGING PARTY'S WRITTEN SUBMISSION

The Beacon Employees Association (BEA) has alleged that the City of Beacon (City) has violated Sections 10(a)(1), (2), (3), (4), (5), and (6) of Mass. Gen. L. c.150E. The City denies the allegations of the Charging Party and files the following response to each allegation.

1. The BEA alleges that Kim Manager made comments on or about September 3, 1990 about Terry President, the BEA President [BEA Submission paragraph 6]. Kim Manager denies having said that President was a "loafing, dues-stealing union fraud" in front of any employees in the bargaining unit. [See Manager affidavit, paragraph 2]. Manager admits having told a fellow manager that bargaining unit employees would be better off with their own organization. It is the City's position, that Manager's statement was a protected expression of opinion.
2. The BEA alleges that the City permitted two employees to use paid vacation leave to attend a Commission hearing on November 3, 1990, but denied permission to Terry President to use paid vacation leave for the same purpose. The City denies that President was eligible to use paid vacation leave on November 3, 1990 and, in support of the City's position, has appended the payroll records of the three employees and an affidavit of the Supervisor of Payroll Functions, I. M. Scribe. A review of the payroll records and Scribe's affidavit demonstrates that President had used 3 vacation days in 1990 prior to November 3, 1990; while the other two employees, Les Employee and Sandy Worker, had used only one vacation day each in 1990. The City has long had a practice of permitting employees who wish to take up to three vacation days without prior notice during the year; but has required employees who wish to take more than three days to request permission in order to schedule the days in advance. [See affidavit of Terry Manager, paragraph 4]. Since both Employee and Worker had taken less than three vacation days prior to November 3, 1990, they were entitled to take a vacation day on that date. Because President previously had taken three vacation days, President was not entitled to take another without prior permission. President never requested permission. [See affidavit of Terry Manager, paragraph 5.] Therefore, the City did not violate Section 10(a)(2) of the Law by denying President's request for paid leave, while granting it to Employee and Worker.
3. ETC . . .

I swear or affirm that the the facts alleged in this statement are true and correct to the best of my knowledge and belief.

s/Respondent's Representative

